November 6, 2014

Matthew Kimmel
Regulatory Branch, CESWG--RD-CC
U.S. Army Corps of Engineers
5151 Flynn Parkway, Suite 306
Corpus Christi, Texas 78411-4318

Dear Mr. Kimmel:

The Environmental Protection Agency (EPA) Region 6 has reviewed Public Notice (PN) SWG-2014-00776, dated October 9, 2014. The project is located in the Corpus Christi Ship Channel (CCSC) at the proposed Dock 15 location, along the north shore of the west end of the Main Turning Basin, approximately 1.04 miles west of the Harbor Bridge, in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: CORPUS CHRISTI, Texas.

LATITUDE & LONGITUDE (NAD 83):
Latitude: 27.81480 North; Longitude: 97.41197 West

The applicant, Martin Midstream Partners, proposes to construct a 40-foot by 60-foot dock structure (alternatively two 50-foot by 175-foot floating barges may be used as the dock platform), four breasting dolphins, four mooring dolphins, and a 20-foot by 117-foot approachway. Approximately 85,000 cubic yards of material will be hydraulically or mechanically dredged to -46.5 feet MLLW + 2 ft overdepth from an approximately 4.5- acre area. Dredge disposal sites will either be the South Shore Cells A and B, Rincon #1, or the Herbie Mauer Dredged Material Placement Area (DMPA).

Also included in this proposal is a request to allow maintenance dredging for a 10-year period.

The applicant has stated that they have avoided and minimized the environmental impacts by limiting work to the minimum necessary to accommodate the planned construction of the facility and conduct maintenance dredging operations.

No mitigation is being proposed for this permit action.

The project site is located within the CCSC, specifically the Main Turning Basin, a heavily-developed, man-made waterway. No special aquatic sites are present, and previous dredging activities, as well as ship traffic and industrialization along the CCSC, probably prevent the

establishment of seagrasses, salt marshes, and oyster reefs at the site. As a result, no unique or valuable aquatic habitat will be impacted at the site.

This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

The following comments are being provided for use in reaching a decision relative to compliance with the EPA's *404(b)(1) Guidelines for the Specification of Disposal Sites for Dredged or Fill Material* (40 CFR Part 230).

- Assuming that the proposed dredged material placement areas will discharge effluent, we recommend this proposed project be reviewed pursuant to Section 404 of the Clean Water Act, in addition to Section 10 of the Rivers and Harbors Act.
- We recommend the applicant explain the purpose of the proposed project, in some detail. Why is the project needed?
- We recommend the applicant provide an alternatives analysis.
- We recommend the applicant describe their efforts to avoid and minimize impacts to aquatic resources, in greater detail. This may constitute part of their alternatives analysis.
- We recommend the applicant consider beneficial use of the dredged material for habitat restoration/creation, rather than disposal in dredged material placement areas (DMPAs), assuming the dredged material is *suitable material, free from toxic pollutants*.
- Section 230.10(b)(1) prohibits the disposal of dredged material that might violate applicable water quality standards, after consideration of disposal site dilution and dispersion. The CWA regulatory mandate for confined disposal facility (CDF) effluent and runoff discharges is very specific. The discharge of effluent from a CDF is defined as a dredged material discharge in 33 CFR 323.2(d) and 40 CFR 232.2(e). The U.S. Army Corps of Engineers (USACE) has issued a Nationwide Permit (NWP 16) at 33 CFR 330.5 to satisfy the technical requirements for Section 404 permits for return water (e.g. effluent) where the quality of the return water is regulated by States through their Section 401 certification processes. However, USACE has determined that the conditioned Section 401 certification placed upon NWP 16 by the Texas Commission on Environmental Quality (TCEQ) is not reasonably implementable or enforceable, according to 33 CFR 325.4(c). So, USACE has determined that prior to the performance of hydraulic dredging, the applicant must obtain a Section 401 water quality certification from the TCEQ for the effluent or return water discharge.

  USACE authorizations and evaluations are therefore not required when *uncontaminated* dredged material is placed in a CDF, where the effluent or runoff into waters of the United States is certified as complying with applicable state Section 401 water quality certification requirements. Thus, contaminant testing does not apply to discharges of *uncontaminated* dredged material into CDFs where there is no reason to believe that contaminants might be released into the environment. However, the NWP does not

authorize the disposal of contaminated sediments at CDFs where there might be release of contaminants into the environment. The nationwide permit does not relieve permit applicants from ensuring that contaminants are not released into the environment either at the effluent discharge point or from the disposal site proper. In fact, special conditions at 33 CFR 330 require that "any discharge of dredged or fill material shall consist of suitable material free from toxic pollutants." Therefore, contaminant testing does apply in cases where *contaminated* dredged material is proposed for disposal in a CDF, and there is the potential for release of contaminants.

- The Corpus Christi Inner Harbor has a history of elevated concentrations of contaminants in sediments. EPA (1976) documented high concentrations of cadmium and zinc in Corpus Christi Inner Harbor sediments. USFWS (1995) found that sediments from the Corpus Christi Inner Harbor had elevated concentrations of chromium, copper, lead, mercury, and zinc. Nicolau and Nunez (2005) also found elevated concentrations of zinc in sediments of the Corpus Christi Inner Harbor.
- We recommend the applicant provide recent data describing the quality of the material proposed to be dredged and disposed. Existing information is acceptable, assuming it is less than five years old, a broad suite of contaminants was measured, and appropriate sample collection and laboratory analytical methods were used, including appropriate detection limits. Excellent guidance is available to support the collection and interpretation of such data:

    - If new sampling and analysis are to be conducted, assuming the dredged material is to be disposed of in DMPAs, as proposed, we strongly recommend the focus be on elutriate testing of the sediments, using Evaluation of Dredged Material Proposed for Disposal at Island, Nearshore, or Upland Confined Disposal Facilities — Testing Manual ([HYPERLINK "http://yosemite.epa.gov/r10/cleanup.nsf/0/fa0745084bfae55688256e5d000a382f/$FILE/trel03-1.pdf"]

    - If however, the dredged material is to be used beneficially, as we recommend, we strongly recommend using the following guidance: Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S. - Testing Manual [HYPERLINK "http://water.epa.gov/type/oceb/oceandumping/dredgedmaterial/upload/2009_10_09_oceans_regulatory_dumpdredged_itm_feb1998.pdf"]

- In addition to providing sediment contaminant data, we recommend the applicant determine whether water quality criteria would be expected to be met at the discharge from the DMPA, as described in the Upland Testing Manual. Depending on the approach taken, this can range from simple comparison of elutriate sample results to water quality criteria, to simple calculations, or more complex modeling. Note also that since the applicant has proposed several alternative placement areas, this will require the applicant to demonstrate that water quality criteria will be met at the discharge from all of them. This could be simplified by proposing a single DMPA.
- Since the applicant is requesting authorization to conduct maintenance dredging, we recommend that the dredged material testing we recommend above be conducted every five years, so that proposed future maintenance dredging events are evaluated prior to dredging, using sediment contaminant data no more than five years old.

If you have any questions on these comments, please contact Ken Teague of my staff at 214-665-6687.

Sincerely yours,

Sharon Fancy Parrish
Chief
Wetlands Section

cc: Jackie Robinson, TPWD
Heather Young, NOAA Fisheries
Pat Clements, USFWS
TCEQ